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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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8 ORIGINAL

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

PVT

FC 07 5057

11 SCOTT JOHNSON,

Case No. 2:07-CV-

Civil Rights

12 Plaintiff,

13 v.

14 S.C. BEACH HOTEL PARTNERS,
15 LLC,

COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF AND
DAMAGES: DENIAL OF CIVIL RIGHTS AND
PUBLIC FACILITIES TO PHYSICALLY
DISABLED PERSONS (CIVIL CODE §§ 54,
54.1 AND 55; INJUNCTIVE RELIEF PER
TITLE III, AMERICANS WITH DISABILITIES
ACT OF 1990

16 Defendant.
17 _____/

18 Plaintiff, Scott Johnson, alleges:
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20 FIRST CLAIM FOR RELIEF: DAMAGES AND INJUNCTIVE RELIEF
21 FOR DENIAL OF FULL AND EQUAL ACCESS TO A PUBLIC ACCOMMODATION:
PUBLIC FACILITIES AT A HOTEL (Civil Code §§ 51, 54.1)

22 1. Plaintiff does not have the substantial use of his legs, and limited use of his hands, and
23 is a "person with a disability" and "physically handicapped person". Plaintiff requires the use

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2 of a wheelchair for locomotion and is either unable to use portions of public facilities which are
3 not accessible to disabled persons who require the use of a wheelchair or is only able to use
4 such portions with undue difficulty. Plaintiff is also unable to use inaccessible door handles.

5 2. The "The Coast Santa Cruz Hotel" (the Hotel) is a hotel consisting of common areas, over
6 50 guest rooms, and restaurant, and is located at 175 West Cliff Drive, Santa Cruz, California.
7 The Hotel is a public accommodation. Defendants own some or all of the Hotel and or manage
8 some or all of the Hotel.

9 3. Summary of facts: This case involves the denial of accessible parking, path of travel,
10 accessible service counters, pool lifts and a roll-in shower to Plaintiff and others similarly
11 situated at the Hotel on July 23, 2006, July 22, 2007 and July 23, 2007 (collectively referred to
12 as the "Dates"). Plaintiff was denied equal protection of the law and was denied Civil Rights
13 under both California law and federal law, as hereinbelow described. Plaintiff was denied his
14 rights to full and equal access to the Hotel because of the above-mentioned barriers. All of this
15 made the Hotel not properly accessible to Plaintiff or to others similarly situated. Plaintiff
16 seeks injunctive relief to require Defendants to remove the above-stated barriers, to comply
17 with ADAAG and the CBC where required, to remove all barriers to access which are readily
18 achievable, to make all reasonable accommodations in policy in order to enable Plaintiff and
19 others similarly situated to use the Hotel and at minimum, to use readily achievable alternative
20 methods to enable Plaintiff to use the goods and services which the Hotel makes available to
21 the non-disabled public. Plaintiff also seeks the recovery of damages for his personal damages
22 involved in the discriminatory experiences on the Dates, and seeks recovery of reasonable
23 attorney's fees and litigation expenses and costs according to statute.

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4. Jurisdiction: This Court has jurisdiction of this action pursuant to 28 USC § 1331 for violations of the Americans with Disabilities Act of 1990, 42 USC 12101 et seq. Pursuant to supplemental jurisdiction, attendant and related causes of action arising from the same facts are also brought under California law, including but not limited to violations of California Civil Code §§ 51, 54, 54.1 and 55.

5. Venue: Venue is proper in this Court pursuant to 28 USC 1391(b) and is founded on the fact that the location where Plaintiff experienced his discrimination is located in this district and that Plaintiff's causes of action arose in this district.

6. Intradistrict: This case should be assigned to the San Jose intradistrict because the incident occurred in, and Plaintiff's rights arose in, the San Jose intradistrict.

7. The Hotel is a "public accommodation or facility" subject to the requirements of California Civil Code § 51, 54, 54.1 and 55.

8. Placeholder.

9. Defendants are and were the owners, operators, managers, lessors and lessees of the subject Hotel at all times relevant herein. Plaintiff is informed and believes that each of the Defendants is and was the agent, employee or representative of each of the other Defendants, and performed all acts and omissions stated herein within the scope of such agency or employment or representative capacity and is responsible in some manner for the acts and omissions of the other Defendants in proximately causing the damages complained of herein.

10. Plaintiff and others similarly situated are disabled persons who require the use of a wheelchair, do not have full use of their hands, and are unable to use public facilities on a "full and equal" basis unless each such facility is in compliance with the provisions of the Americans

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2 with Disabilities Act of 1990 and the regulations thereof. Under Civil Code §§ 51 and 54.1,
3 Defendants were required to comply with the requirements of the Americans with Disabilities
4 Act of 1990 and the federal regulations adopted pursuant thereto. The acts and omissions of
5 which Plaintiff complains took place at the Hotel.

6 11. Civil Code §§ 51 and 54, et seq., were enacted to prohibit discrimination against people
7 with disabilities and to encourage the full and free use by people with disabilities of public
8 facilities and other public places. CC §§ 51 and 54(c) state that a violation of the Americans
9 with Disabilities Act of 1990 is a "violation of this section"; CC § 54.1(a) states that
10 individuals with disabilities are entitled to "full and equal access" to public accommodations
11 and that such access means that which meets the standards of Titles II and III of the Americans
12 with Disabilities Act of 1990 and federal regulations adopted pursuant thereto; CC § 52 states
13 that minimum damages for discrimination are \$4,000 for each instance of discrimination; CC §
14 54.3 states that a defendant who denies or interferes with a disabled person's rights of access is
15 liable for actual damages of not less than \$1,000 and attorneys' fees.

16 12. Health & Safety Code § 19955 was enacted "To ensure that public accommodations or
17 facilities constructed in this state with private funds adhere to provisions of Chapter 7
18 (commencing with § 4450) of Division 5 of Title 1 of the Government Code." Such public
19 accommodations include those which are the subject of this action. On information and belief,
20 Title 24 California Code of Regulations, formerly known as the California Administrative
21 Code, was in effect at the time of construction and of each alteration of work, all of which
22 occurred after July 1, 1982, thus requiring access complying with the specifications of title 24
23 for all such construction and for each such "alteration, structural repair or addition".

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2 13. Parking: The Hotel has no accessible parking for registration. The "accessible parking"
3 for the restaurant has slope barriers. The service counters at the Hotel are too high. The
4 Hotel's pool and spa lacks appropriate lifts. There are no roll-in showers in guest rooms at the
5 Hotel.

6 When Plaintiff registered for his July 2006 visits, he was informed that none of the
7 rooms at the Hotel had roll-in showers. He nevertheless stayed at the Hotel on July 22 and 23,
8 2006 and was subjected the above-stated barriers.

9 When Plaintiff registered for his July 23, 2007 visit, he again was informed that none of
10 the guests' rooms had roll-in showers. He nevertheless stayed at the Hotel on July 23, 2007 and
11 was subjected to the above-stated barriers.

12 As a result, Plaintiff was humiliated and embarrassed, all to Plaintiff's damages in an
13 amount according to proof.

14 14. Defendant's failure to remove all readily achievable barriers, institute policies in
15 furtherance of accessibility or at least have an alternate policy to enable Plaintiff to use the
16 goods and services offered to the non-disabled public without having to suffer the indignities,
17 as aforesaid, was a violation of the California Building Code, the Americans with Disabilities
18 Act and federal regulations adopted pursuant thereto, and as a consequence, was a violation of
19 Civil Code §§ 51 and 54, et seq.

20 15. Injunctive relief: Plaintiff seeks injunctive relief to prohibit the acts and omissions by
21 Defendants at the Hotel as stated above which appear to be continuing, and which have the
22 effect of wrongfully excluding Plaintiff and others similarly situated from using the Hotel.
23 Plaintiff will either continue to use the Hotel or will refrain from using the Hotel until the

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2 barriers are removed. Such acts and omissions are the cause of humiliation and mental and
3 emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior and
4 second class citizen and serve to discriminate against Plaintiff on the sole basis that Plaintiff is
5 a person with a disability and requires the use of a wheelchair for movement in public places.
6 Plaintiff is unable so long as such acts and omissions of Defendants continue, to achieve equal
7 access to and use of this public facility. The acts of Defendants have proximately caused and
8 will continue to cause irreparable injury to Plaintiff if not enjoined by this Court. Plaintiff
9 seeks an injunction as to every violation of California or Federal disability access law which is
10 related to his disability.

11 16. Damages: As a result of the denial of equal access to the Hotel and due to the acts and
12 omissions of Defendants and each of them in owning, operating and/or leasing the Hotel,
13 Plaintiff suffered a violation of Civil Rights including but not limited to rights under Civil Code
14 §§ 51, 54 and 54.1, and suffered mental and emotional distress, embarrassment and humiliation,
15 all to Plaintiff's damages. Defendant's actions and omissions to act constituted discrimination
16 against Plaintiff on the basis that Plaintiff was physically disabled and unable to use the
17 facilities on a full and equal basis as other persons, and on the additional basis that Plaintiff had
18 asked the property owner to remove barriers from the property. Plaintiff seeks actual damages,
19 including the minimum damages of \$4,000 per visit pursuant to CC § 52 and/or \$1,000 per visit
20 pursuant to CC § 54.3. Plaintiff also seeks trebling of all of the actual damages as provided by
21 Civil Code § 54.3.

22 17. Fees and costs: As a result of Defendant's acts, omissions and conduct, Plaintiff has been
23 required to incur attorney's fees, litigation expenses, and costs as provided by statute, in order

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2 to enforce Plaintiff's rights and to enforce provisions of the law protecting access for disabled
3 persons and prohibiting discrimination against disabled persons. Plaintiff therefore seeks
4 recovery of all reasonable attorney's fees and costs, pursuant to the provisions of Civil Code §§
5 52 and 54.3. Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for
6 damages to Plaintiff, but also to force the Defendants to make their facilities accessible to all
7 disabled members of the public, justifying "public interest" attorney's fees, litigation expenses
8 and costs pursuant to Code of Civil Procedure § 1021.5.

9 18. Wherefore, Plaintiff asks this Court to preliminarily and permanently enjoin any continuing
10 refusal by Defendants to comply with the requirements of the California Building Code and the
11 Americans with Disabilities Act of 1990 and regulations adopted pursuant thereto with respect
12 to access of disabled persons to the Hotel; for minimum damages pursuant to CC § 52; for
13 actual and treble damages pursuant to CC § 54.3 and for attorneys' fees and costs pursuant to
14 CC §§ 52, 54.3 and 1021.5.

15 SECOND CLAIM FOR RELIEF:
16 VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990
42 USC §§ 12101 FF

17 19. Plaintiff realleges the allegations of paragraphs 1-18 hereof.

18 20. Pursuant to law, in 1990 the United States Congress made findings per 42 USC §12101
19 regarding physically disabled persons, finding that laws were needed to more fully protect
20 "some 43 million Americans [with] one or more physical or mental disabilities"; that
21 "historically society has tended to isolate and segregate individuals with disabilities"; and that
22 "such forms of discrimination against individuals with disabilities continue to be a serious and
23 pervasive social problem"; that "the Nation's proper goals regarding individuals with disabilities

are to assure equality of opportunity, full participation, independent living and economic self sufficiency for such individuals"; and that "the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous ..."

21. Congress stated as its purpose in passing the Americans with Disabilities Act (42 USC §12101(b)):

It is the purpose of this act

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, ***enforceable standards*** addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and

(4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of ***discrimination faced day to day*** by people with disabilities (emphasis added).

22. As part of the Americans with Disabilities Act, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (42 USC 12181 ff). Among "private entities" which are considered "public accommodations" for purposes of this Title are a Hotel (Regulation 36.104).

23. Pursuant to §302, 42 USC §12182, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases or leases to, or operates a place of public accommodation."

24. Among the specific prohibitions against discrimination were included:

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2 **§12182(b)(2)(A)(ii):** "A failure to make reasonable modifications in policies, practices or
3 procedures when such modifications are necessary to afford such goods, services, facilities,
4 privileges, advantages or accommodations to individuals with disabilities ...";

5 **§12182(b)(A)(iii):** "a failure to take such steps as may be necessary to ensure that no individual
6 with a disability is excluded, denied service, segregated, or otherwise treated differently than
7 other individuals because of the absence of auxiliary aids and services ..."; **§12182(b)(A)(iv):**

8 "A failure to remove architectural barriers and communication barriers that are structural in
9 nature, in existing facilities ... where such removal is readily achievable"; **§12182(b)(A)(v):**

10 "Where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily
11 achievable, a failure to make such goods, services, facilities, privileges, advantages, or
12 accommodations available through alternative methods if such methods are readily achievable".

13 The acts and omissions of Defendants set forth herein were in violation of Plaintiff's rights
14 under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part
15 36ff.

16 25. The removal of each of the barriers complained of by Plaintiff as hereinabove alleged, were
17 at all times herein mentioned "readily achievable" under the standards of the Americans With
18 Disabilities Act. Because the Hotel was not accessible, Defendants had an obligation to have
19 some sort of plan which would have allowed Plaintiff to enjoy the Hotel's goods and services
20 without having to suffer the indignities as aforesaid.

21 26. Pursuant to the Americans with Disabilities Act, 42 USC 12188ff, §308, Plaintiff is
22 entitled to the remedies and procedures set forth in §204(a) of the Civil Rights Act of 1964, 42
23 USC 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability in

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2 violation of this Title or has reasonable grounds for believing that he is about to be subjected to
3 discrimination in violation of §12182. On information and belief, Defendants have continued
4 to violate the law and deny the rights of Plaintiff and of other disabled persons to access this
5 public accommodation since on or before the Dates. Pursuant to §12188(a)(2), "In cases of
6 violations of §12182(b)(2)(A)(iv) ... injunctive relief shall include an order to alter facilities to
7 make such facilities readily accessible to and usable by individuals with disabilities to the
8 extent required by this title."

9 27. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of
10 1964, (42 USC 2000(a)-3(a), and pursuant to Federal Regulations adopted to implement the
11 Americans with Disabilities Act of 1990. Plaintiff is a person for purposes of Section 12188(a)
12 of the ADA who is being subjected to discrimination on the basis of disability in violation of
13 Title III and who has reasonable grounds for believing he will be subjected to such
14 discrimination each time that he may attempt to patronize the Hotel.

15 Wherefore Plaintiff prays for relief as hereinafter stated:

16 PRAYER

17 1. Issue a preliminary and permanent injunction directing Defendants to modify its
18 facilities as required by law to comply with the ADAAG where required, remove all barriers
19 where it is readily achievable to do so, institute policies in furtherance of accessibility or at least
20 have an alternate policy to enable Plaintiff to use the goods and services offered to the non-
21 disabled public so that it provides adequate access to all citizens, including persons with
22 disabilities; and issue a preliminary and permanent injunction directing Defendants to maintain
23 its facilities usable by plaintiff and similarly situated persons with disabilities in compliance

1 with federal regulations, and which provide full and equal access, as required by law;

2 2. Retain jurisdiction over the Defendants until such time as the Court is satisfied that
3 Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible
4 public facilities as complained of herein no longer occur, and will not recur;

5 3. Award to Plaintiff all appropriate damages, including but not limited to statutory
6 damages, treble damages, general damages and special damages in an amount within the
7 jurisdiction of the Court, all according to proof;

8 4. Award to Plaintiff all reasonable attorneys' fees, all litigation expenses, and all costs
9 of this proceeding as provided by law; and

10 5. Grant such other and further relief as this Court may deem just and proper.

11 Date: September 28, 2007

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15 S/Thomas N. Stewart, III
16 By: THOMAS N. STEWART, III
17 Attorney for Plaintiff
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